



Is the Standing Commission of Inquiry a Successful Model for Anti-corruption Commissions?

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We are all aware of how corruption can strike at the institutions of Government. Opportunities will always exist for politicians, police and public servants to benefit from corrupt practices. Often those who succumb to these temptations do so in isolation. However, when corruption becomes entrenched in a country, state, province or city it is possible, even likely, that a relationship will develop between political corruption and the corruption of police and public servants.

By the late 1980s entrenched corruption of that type had developed in Queensland, my home state.

The organisation I chair, the Queensland Criminal Justice Commission (CJC), is a standing commission of inquiry with a broad anti-corruption jurisdiction, significant investigative powers and a substantial research and oversight role.

The CJC, which commenced in 1990, is the direct descendent of the Fitzgerald Commission of Inquiry, which was a landmark event in recent Queensland history.

The Fitzgerald Inquiry was set up in 1987 by the then government in response to sensational media reports of corrupt police involvement in prostitution and illegal gambling. The Inquiry, which was initially intended to last for only a few weeks, ran for over two years, much of it in the glare of widespread media publicity. The Inquiry hearings and the report which followed revealed to Queenslanders that corruption and bribery had become so pervasive in the Police Service that it had developed into an organised protection scheme called “the Joke”. The corruption reached all the way to the Commissioner of Police. The Inquiry also explored allegations of bribery and corruption involving sections of government, particularly at ministerial level.

Directly or indirectly as a result of the Inquiry’s activities several senior police including the then Police Commissioner, Sir Terence Lewis were convicted and imprisoned. The prosecutions which followed the Inquiry also resulted in the conviction and imprisonment of some former government ministers.

The dramatic disclosures of the Fitzgerald Inquiry, supported as they were by intense media attention, created a climate of public opinion calling for reform within the Police Service.

The Fitzgerald Report advanced a comprehensive blueprint for reforming the State’s police service and political institutions. The intention of the report was communicated in this declaration: “this report concentrates upon the future, not the past”.

Public opinion was such that upon delivery of the report the government promised to adopt its recommendations “lock, stock and barrel”.

One of the key recommendations of the Inquiry was to create a permanent body, in the form of the CJC, to act as an ongoing commission of inquiry and to carry through with the reforms which had been identified in the Report.

Now that it is over ten years old, the CJC is a useful case study in the strengths and weaknesses of standing commissions of inquiry.

KEY FEATURES OF THE CRIMINAL JUSTICE COMMISSION

Bodies like the CJC, which have their genesis in a high profile public inquiry, are likely to benefit from the initial concentration of political and media attention upon the corruption originally detected. No doubt it is for this reason that the CJC was granted a broad jurisdiction and significant powers. The key features of the Commission are:

1. It has investigative jurisdiction over police, public sector employees, state and local politicians. It can:
 - receive and investigate complaints;
 - proactively commence investigations on its own motion.
2. It has broad investigative powers, similar to those exercised by Royal Commissions. It can:
 - conduct public hearings;
 - compel the attendance of witnesses;
 - conduct compulsory hearings at which the person is required by law to answer questions;
 - apply for search warrants and listening device warrants;
3. It has its own in-house investigators and surveillance capability.
4. It has a corruption prevention function which provides advice and assistance to public sector agencies.
5. It also has a broader role to conduct research and monitor and promote reform in the Police Service and the criminal justice system generally.
6. It is independent of the government of the day, but is answerable to an all-party Parliamentary Committee.

It can be seen that the CJC has an unusually broad sweep of responsibilities for a civilian anti-corruption agency. It is undoubtedly the case that the CJC's responsibility to investigate complaints against politicians and senior bureaucrats has on the one hand given it a high public profile and on the other hand generated criticism particularly from those the subject of investigation. The CJC's strong Research Division has over the years produced major reports which have generated debate and controversy on occasions but more recently have drawn praise for their quality and soundness. Nevertheless, oversight of the Queensland Police Service remains the dominant function of the CJC. Two-thirds of complaints received by the CJC relate to police conduct and the research emphasis of the CJC has given greatest attention to the Police Service.

COMPARISON WITH OTHER OVERSIGHT AGENCIES

Around the world there are very few standing commissions of inquiry with all the powers usually associated with a stand alone royal commission or commission of inquiry.

It is even more unusual for a single agency to hold jurisdiction to investigate corruption in each of the three risk areas –

- politicians
- police

- public servants

Most oversight models focus on police misconduct and are driven by citizen complaints against police.

A variety of civilian police review models have been adopted around the world during the past thirty years. Regrettably, in many jurisdictions, as in Queensland, the impetus for creating these agencies was a corruption or misconduct scandal.

At the time of the creation of the CJC, civilian oversight bodies were less numerous. At that time few bodies had the independent investigative capability given to the CJC and its New South Wales counterpart the ICAC. Today, police oversight bodies are numerous throughout the world. There are a large number of such bodies in Canada. In the United States, with its city based police forces, 71 of the nations 100 largest cities have civilian review mechanisms in place. Each year this number increases. Oversight offices opened during the past year in Washington DC, Las Vegas, Nebraska and California.

Many of the North American agencies are citizen boards which review police internal investigations, but increasingly, external investigation powers are being extended to civilian oversight agencies. External investigation models currently exist in New York, San Francisco, Berkley and Minneapolis. In Canada external investigations are carried out by oversight agencies in Ontario, British Columbia, Manitoba and Quebec. In Northern Ireland and South Africa the police oversight agencies employ their own civilian investigators.

The global extension of civilian oversight of police points to a change by governments from a general reluctance to interfere in areas traditionally claimed to be the province of policing to an increased reliance on external accountability models. In many cases this direction reflects a lack of community trust in police departments handling their own complaints.

Because of the citizen complaint driven focus of most of these agencies, in the majority of cases their jurisdictions do not address serious police corruption such as bribery or drug dealing. Their jurisdictions are more likely to cover excessive use of force or racism in policing.

The CJC has traditionally carried out three primary functions in its police jurisdiction:

1. Receiving and investigating complaints against police. A large proportion of these complaints are received directly from the public.
2. Providing research and corruption prevention reports, recommendations and assistance to the Service.
3. Instituting proactive intelligence driven investigations of alleged corruption and serious misconduct.

In the latter category, a proactive investigation is rarely in response to the concerns of an individual complainant. More usually the allegations derive from information or intelligence collated from a number of sources.

The CJC, because it has a sophisticated investigative capability, is also able to target corruption in the political and public service spheres.

On occasion, when the public interest justifies its use, the CJC holds public inquiries to advance its investigations or to achieve preventative outcomes.

MAINTAINING THE REFORM MOMENTUM

High profile events such as the Fitzgerald Inquiry, and their equivalents in other jurisdictions (for example, Wood Royal Commission in New South Wales; Mollen and Knapp Commissions in New York City) create a climate which can be very conducive to reform. They do this primarily by focussing attention on problems, and neutralising internal and external resistance to reform. However, experience shows that organisational resistance - and amnesia - are likely to return once the initial flurry of reform activity generated by high profile inquiries dies down. The Knapp Commission is an example of this. In short, reform tends not to be durable.

One of the strongest arguments for establishing standing commissions of inquiry is that they provide a permanent mechanism for ensuring that reform stays on the agenda and that politicians and police departments do not revert to their old ways. But simply establishing independent bodies is no guarantee that the reform momentum will be maintained. If these bodies are to be effective they have to develop a range of strategies for ensuring that reform remains a live issue and that there is no slackening in the effort to minimise the risk of corruption.

Some of the strategies which we have employed at the CJC are:

- Using periodic public reports to focus on areas which, in our view, warrant attention. The 1997 Police and Drugs Report is a case in point, as is our 1996 Report on Police Watchhouses. Both reports have been the subject of follow up reports.
- Conducting public inquiries from time to time. Such inquiries can be expensive but properly managed they may be very useful in re-focussing public organisational attention on reform issues.
- Maintaining close involvement with the Police Service and the Public Service by participating in, and contributing to, a myriad of working parties, internal committees and the like, and making procedural recommendations for improved systems. Lower level, incremental reform tends not to attract the headlines, but it is a very important component of an overall reform strategy.
- Focussing on improving the anti-corruption infrastructure within the Police Service and the Public Service. For example, the CJC has been supportive of the Queensland Police Service's establishment of an Ethical Standards Command, as we have seen this to be a way in which the Service can take on more responsibility for regulating its own behaviour.

Others will judge how successful these efforts have been. We believe this much can be confidently said. Queensland is very different to how it was prior to the Fitzgerald Inquiry. The Queensland Police Service today is a markedly different - and better - organisation. The current political leaders have publicly asserted their commitment to integrity in government. The public service has, through legislation and administrative reform, been subjected to a comprehensive range of integrity obligations.

THE IMPACT OF POLICE SERVICE REFORMS

The CJC delivered a report in September 1997 entitled "Integrity in the Queensland Police Service: Implementation and Impact of the Fitzgerald Inquiry Reforms". The purpose of that report, delivered eight years after the Fitzgerald Inquiry reported, was to provide an assessment of the implementation

of the Fitzgerald Inquiry recommendations relating to the administration of criminal justice and the Police Service. Data utilised for this purpose included public surveys, interviews with long serving police, and “ethics” surveys of junior police officers, as well as complaints data.

On the basis of the survey data, the report concluded there was a marked improvement in public perception of the Police Service between 1991 and 1995. Furthermore, there was a high level of acceptance by the Queensland public of the need for an external complaints investigation process and the majority of respondents surveyed in 1995 saw the CJC as very or fairly independent of police and having at least some success in improving police conduct. More recent survey data have confirmed those results. A 1999 survey of 1,500 respondents gave the following results.

- Are you aware the CJC investigates police? Yes: 91% No: 9%
- Complaints against police should be Investigated by an independent body? Agree: 88%
- How successful do you think the CJC Has been in improving police behaviour? Very or fairly successful: 65%

Interviews with serving police officers who joined the Service prior to the commencement of the Fitzgerald Inquiry disclosed the following opinions eight years later:

- The Police Service is a “cleaner” organisation and there is now greater compliance with rules governing the conduct of police.
- There is less misconduct in some areas, particularly involving drinking alcohol on duty, unlawful assaults and “verballing”.
- There is a greater likelihood that suspected misconduct and improper behaviour by police will be detected and reported.

These opinions were corroborated by some of the objective data. There was a drop in the number of allegations of duty failure recorded per 1,000 officers, despite a considerable increase in the extent of police civilian contact. This trend suggests that police have become more professional in their dealings with the public.

In addition to the complaints and disciplinary area, the report reviewed the implementation of Fitzgerald Inquiry recommendations for the Police Service in the areas of recruiting and training and also management and supervisory skills. The following changes were noted:

- The Police Service has significantly altered the gender, educational and age profile of its recruit intakes broadly in the directions recommended.
- The Police Service has developed, or is developing, managerial strategies to reduce the opportunities for misconduct, including the establishment of a risk management policy, and incorporation of ethics components in staff development programs.

On the other hand, in some significant aspects it was concluded that the actual day to day task environment of operational police had changed little from that criticised by the Fitzgerald Inquiry Report as contributing to a closed organisational culture.

The overall picture is of a markedly improved organisation. The report concluded that there were positive signs of an improvement in police standards of behaviour and their attitudes on ethical issues although there was scope for more to be achieved.

THESE ACHIEVEMENTS SHOULD BE VIEWED IN CONTEXT

The analysis of reform in the Queensland Police Service over the past decade suggests that under certain circumstances external oversight bodies may be able to contribute to behavioural and attitudinal change in police organisations.

However, there are factors which make it problematic to generalise from Queensland to other jurisdictions. The heightened public expectations in the aftermath of the Fitzgerald Inquiry facilitated change. Furthermore, the Service's senior management was replaced and the new management has been supportive of the reform process.

Furthermore, the CJC is an unusual body in that it has, in addition to a general complaints function, an extensive proactive investigative capability as well as a broader mandate to monitor and promote reform within the Police Service.

The impact of the CJC can not be easily disentangled from the broader context in which its birth and development occurred.

CHALLENGE FOR THE FUTURE

The initial success of an anti-corruption commission may paradoxically contribute to calls for its dismantlement. The criticisms may take different and often contradictory approaches, for example:

- that oversight causes police to be less willing to “do their job” because they are fearful of a complaint investigation;
- that the oversight commission is too costly to maintain;
- that the commission has been “captured” by the police service or public service it is supposed to oversight and is failing to perform its role with vigour; and
- that the “problem” is solved and the politicians, police and public servants can now be trusted to keep their own houses in order.

DOES OVERSIGHT IMPACT ON POLICE PERFORMANCE?

It is not uncommon for police unions, “law and order” politicians and other critics of external oversight bodies to claim that police have become less willing to “do their job” because they are fearful of being the subject of a complaint investigation. Some academic commentators have also raised this concern.

One way of testing this assertion is to survey police officers about their enforcement practices. Surveys in both the United States and in the United Kingdom have failed to find evidence of significant adverse impacts on police behaviour.

Adverse effects on police performance can also be monitored by examining trends and indicators of discretionary police activity. For example, the CJC, has analysed trend data on the number of recorded drug and good order offences per 1,000 officers. These data show a steady increase in the number of such offences since 1990, notwithstanding a doubling in the number of recorded complaints in the early part of the decade. If police were being constrained by a fear of complaints, we would expect this to be reflected in a drop over time in the level of discretionary policing activity. The data rebut claims from certain quarters that the activities of the CJC have had an adverse effect on the preparedness of Queensland police to enforce the law.

IS OVERSIGHT TOO COSTLY?

Standing commissions such as the CJC, if they are to do their job properly, need to be properly resourced. The cost associated with maintaining standing commissions of inquiry is often cited by governments as a reason for not setting up these bodies, and is often given as a reason for shutting them down or cutting back on their activities. However, I would argue strongly that this approach is a false economy.

The CJC's total funding from Government in 2000/01 was approximately \$25m. This might sound like quite a lot, but to put the matter in perspective this equates to only about 2% of the total Police and Corrections budget and an insignificant proportion of the total State public service budget for employee expenses of \$8 billion. Given the inestimable damage which was done to public confidence in the Government and the Police Service by the revelations disclosed in the Fitzgerald Inquiry, this is a relatively small price to pay to ensure that there is no need for another inquiry of this magnitude.

THE ISSUE OF CAPTURE

Standing commissions of inquiry, unlike one off inquiries, have to maintain ongoing working relationships with the organisations which they are responsible for overseeing. You simply cannot afford to be in a position of continual conflict where the commission must resort to the use of coercive powers every time information or action is required from the organisation. On the other hand, it must be recognised that there is a risk that the working relationship may become too comfortable and that potentially difficult issues are avoided just for the sake of keeping the peace. If an oversight organisation does allow this to happen then it will cease to be effective and, quite deservedly, will lose public confidence.

Some critics of the CJC have suggested that the organisation has been captured by the Police Service and has failed to push for reform vigorously enough. An examination of our track record will show that there is little basis to this criticism. But it also has to be acknowledged that the risk of capture is a real one and that permanent commissions of inquiry need to be alert to this risk. Regular management monitoring supported by assessment of survey data should ensure that the organisation balances its responsibilities appropriately and maintains its effectiveness.

CAN THE PROBLEM OF CORRUPTION BE SOLVED?

A recent Home Office research paper by Tim Newburn entitled "Understanding and Preventing Police Corruption: Lessons from the Literature" observed that all too often official inquiries into police corruption somewhat undermine the force of their recommendations by suggesting that the implementation of new tactics will eliminate corruption. I agree that it is naive to assume that corruption will be completely eliminated within any police service. I am happy to adopt the conclusion reached by the author of that Home Office paper:

“The evidence reviewed in this report suggests that any complacency about corruption, or lack of realism about the prospects of reform, will lead to the cycle beginning all over again. Whilst there are examples of conspicuous success in reforming highly corrupt police forces, there are equally conspicuous examples of corruption returning with equal if not greater force to those self-same forces some years in the future. Vigilance and realism must be the watchwords of the police administrator seeking to control corruption.”

Those words apply equally to the role of oversight agencies. Furthermore, the risk of corruption returning is not restricted to police services. The risk also exists in public service agencies.

PUBLIC CONFIDENCE IS ESSENTIAL

A standing commission of inquiry is unlikely to survive if it does not enjoy public confidence.

Political support for an oversight body will wax and wane. Police Unions are well resourced vocal political lobbyists. Corrupt politicians, police and public servants the subject of investigation will sometimes choose to make counter accusations against their investigators. On such occasions the hearing powers of the commission will be characterised as those of a “star chamber” and claims of double jeopardy will be voiced.

In my view, a commission will weather these attacks best if it can draw on a reservoir of public confidence. The existence of credible accountability arrangements is an important factor in building public confidence in the organisation.

The CJC has a three tier accountability structure under its legislation.

- **Commissioners** - Three of the five are required to have demonstrated an interest and ability in community affairs.
- **All-party Parliamentary Committee** - The CJC is answerable to the Committee.
- **Parliamentary Commissioner** - A senior lawyer with Royal Commission powers to investigate complaints against the CJC and its staff.

I believe public confidence in the CJC has been enhanced by the existence of these effective accountability processes.

In a 1999 public opinion survey we were also pleased to find that 89% of respondents said that the CJC had been a good thing for Queensland. We take this as a vote of confidence by the people of Queensland that the cost of running the CJC is money well spent.

THE WAY FORWARD FOR ANTI-CORRUPTION COMMISSIONS

I believe the CJC can claim a commendable level of achievement in the decade since the Fitzgerald Inquiry concluded. I also believe the standing commission of inquiry model has worked in the specific environment we have in Queensland.

The challenge for the future is to maintain that effectiveness on a permanent basis. The CJC has responded to this challenge by reassessing its strategic directions.

Many oversight agencies like the CJC commenced in response to an existing corruption or misconduct problem. In their formative years they will find it necessary to concentrate on dealing with the existing problem.

Once the objective of suppressing the pre-existing corruption has been achieved the oversight agency can move to minimising the risk of problems re-emerging and promoting continuous improvement in the police service.

The CJC some time ago identified the need to re-focus on a more strategic proactive approach to dealing with corruption and misconduct.

Our approach has been guided by the views of Professor Malcolm Sparrow of Harvard University who argues the key task of regulatory agencies as being to “pick important problems and fix them”.

This approach recognises that the social objectives of oversight may be best achieved by identifying the underlying causal factors that give rise to corruption. This approach can inform research and recommendations for change. The positive cumulative impact of this proactive approach can far outweigh the limited benefits achieved from reactive case by case complaint investigations.

What I have articulated describes a risk management approach to misconduct. Major areas of corruption risk are identified and the agency’s work is prioritised accordingly.

In the language of crime prevention, it is about not only being tough on corruption but also tough on the causes of corruption.

By identifying areas and individuals who are vulnerable to corruption and monitoring emerging risks, the agency can act as an early warning system.

THE WAY FORWARD IN QUEENSLAND

The CJC has in recent times implemented a broader array of strategies in promoting preventative outcomes.

These include:

- ensuring that investigations focus not only on whether there is enough evidence to warrant charging someone, but also on identifying how the risk of such behaviour recurring can be reduced so that this advice can be passed back to agencies;
- analysing complaints data on a continuous basis to identify trends and patterns that might warrant a preventive response;
- analysing intelligence data, complaints data and other information in order to identify priority areas for investigation or research;
- encouraging agencies to look for opportunities to use managerial responses where appropriate.

I have spoken about a proactive preventative response to corruption and misconduct. Building the capacity of the political system, police service and public service to resist corruption is a central

component of that response. Another component is to identify the problems, the corruption risks, and target them with a range of responses rather than just enforcement.

When we talk of prevention often it is seen as involving “soft” activities such as improving client service, establishing partnerships, providing advice, and so on. Many of these activities are important. But a prevention approach does not necessitate a “softer” style or require the agency to back-off from taking difficult enforcement decisions.

Malcolm Sparrow argues that agencies need to become smarter, not “softer”. Enforcement action will continue to be appropriate as part of a mix of targeted responses, but a strategic approach dictates that it should be directed to addressing some identified risk.

The mature oversight agency will find that the majority of complaints relate to less serious matters or one-off events. But a small proportion of politicians, police and public servants are capable of real criminality. Drug dealing, bribery and fraud are not beyond these individuals. Such behaviour is beyond “soft” approaches. Such behaviour requires the effective enforcement processes usually deployed against other types of criminals. Effective proactive covert investigative techniques are often required to detect, investigate and prosecute this serious misbehaviour. A successful result rids the community of a corrupting influence and provides a powerful deterrent.

An effective anti-corruption agency requires the resources and capability to mount such operations. The CJC currently has that capability and exercises it effectively.

The process of building public sector capacity to prevent corruption must not result in decisions which impede our also maintaining an effective intelligence driven proactive investigative response to corruption and serious misconduct.

SUMMARY

In short, the way forward for anti-corruption agencies is, I believe, to identify corruption and misconduct risks and to use a problem solving approach to managing those risks. Those familiar with problem oriented policing initiatives will note the similarities.

The mature anti-corruption body must move to an emphasis on minimising the risk of former corruption re-emerging. It must identify new risks arising from social and technological change. This response will involve an increased emphasis on monitoring and capacity building in the public sector. At the same time the agency must continue to maintain an effective targeted investigative capability to suppress and deter serious misconduct.

The standing commission of inquiry is not the only model for a successful anti-corruption agency. However, the CJC experience has demonstrated how a standing commission of inquiry can survive to middle age. With a flexible problem solving approach to its jurisdiction I believe such a model is capable of being successful into the foreseeable future.